

NO. PD-1012-16

LANNY MARVIN BUSH,

VS.

THE STATE OF TEXAS

§ IN THE COURT OF
§
§ COURT OF CRIMINAL APPEALS
§ 3/31/2017
§ ABEL ACOSTA, CLERK
§ CRIMINAL APPEALS
§
§
§ STATE OF TEXAS

MOTION TO EXTEND TIME TO FILE APPELLANT'S RESPONSE
BRIEF

Patrick Howard, attorney for Lanny Marvin Bush, Appellant files this Motion to Extend Time to File Appellant's Response Brief, and in support hereof respectfully shows as follows and requests this Court grant this Motion.

A. Introduction

1. Appellant is Lanny Marvin Bush, represented by Patrick Howard.
2. Appellee is the State of Texas, represented on Appeal by the Coleman County District Attorney, Heath Hemphill and Brown County Assistant District Attorney Elisha Bird.

B. Argument & Authorities

3. This case is on appeal from the 42nd Judicial District Court of Coleman County, Texas, numbered 2602 and styled the STATE OF TEXAS vs. LANNY MARVIN BUSH. Appellant was convicted of Capital Murder, following a jury trial and assessed a sentence of life without parole in the Texas Department of Criminal Justice.

4. On August 11, 2016, the Eleventh Court of Appeals held the evidence insufficient to support capital murder, but sufficient to support murder and remanded the case to the trial court for a new punishment hearing.

5. Both the State and the Appellant filed Motions for Rehearing which were denied by the Eleventh Court of Appeals.

6. The State and Appellant filled Petitions for Discretionary Review. On January 11th, 2017, the Court of Criminal Appeals denied Appellant's Petition for Discretionary Review but granted the State's Petition for Discretionary Review.

7. Based on confusion, partially caused by Appellant's partial desire to represent himself, this Court on February 7th, 2017, Ordered the Trial Court to hold a hearing regarding Appellant's desire for new counsel, Appellant's current qualifications for indigency, and if qualified, clarification of Appellant's Counsel.

8. At this hearing on February 14th, 2017, the Trial Court appointed Appellants new counsel.

9. The State filed their Appellate Brief on the Merits on February 13th, 2017.

10. Appellant's Brief is currently due March 30th, 2017.

11. Counsel relies on the following facts as good cause for the requested extension:

Appellant was granted a previous extension until March 30th, 2017 and admonished there would be no more extensions which Counsel accepted. Counsel had obtained a copy of the electronic Reporter's Record from the previous Appellate counsel. Upon working on the brief which is substantially done, it was discovered the copy of the electronic Reporter's Record is not a complete copy of the trial transcript and is missing material portions necessary for completion of the brief.

Counsel has personally visited the previous Appellate counsel's office and the Brown County District's attorney's office and contacted the Coleman County District Clerk and Coleman County District Attorney's Office.

Counsel has learned there was actually only one electronic copy of the Reporter's Record and this record was shared from the various entities in this case. Counsel is the third Appellate Counsel for Appellant in this case.

Counsel has further contacted the Trial Reporter and has filed pending motions for an additional copy of the missing trial transcript, which Counsel's knowledge has neither been granted nor denied by the Trial Court.

12. Counsel for Appellant respectfully requests an additional extension of time of fifteen days to file Appellant's Brief. Counsel would argue this extension is unavoidable and not due to a delay due to the actions of Appellate or the current Counsel. Upon discovery, Counsel has taken all reasonable actions to cure this issue. Counsel would respectfully show this

Court Counsel does not currently possess the missing portions of the Reporter's Record but believes this will be satisfactorily cured in the coming days. As of 4:45 p.m. on March 30, 2017 the missing electronic record was located and is now in the possession of the Coleman District Clerk. Counsel will have access tomorrow.

13. One extension of time to file the brief has been requested and granted in this cause by this Counsel.

14. Appellant is currently incarcerated.

15. The current deadlines and settings in this case are dependent on the granting of this Motion. No other settings are known at this time to Counsel for the Appellant.

16. Counsel apologizes for this delay which was not intentional or purposeful. The extension requested is believed only for the additional amount of time necessary to complete an appropriate and fair brief on behalf of the Appellant.

C. Prayer

For these reasons, Patrick Howard ask and prays this Court to grant this motion and grant an extension of time for Appellant, to file Appellant's response brief.

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By:

/S/ Patrick Howard

Patrick Howard
Texas Bar No. 24046113
Court Appointed Counsel

CERTIFICATE OF CONFERENCE

I certify that I have conferred with the Coleman County District Attorney's Office, Mr. Heath Hemphill, and Brown County District Attorney's Office, Mrs. Elisha Bird and both are unopposed to this Motion.

/S/Patrick Howard

Patrick Howard

CERTIFICATE OF SERVICE

I certify a true and correct copy of the above and foregoing Appellant's Brief was served by regular U.S. Mail, facsimile or hand delivery in accordance with the Rule 9.5 of the Texas Rules of Appellate Procedure on or before March 30, 2017, on each party as listed below:

Appellant:	Lanny Bush
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Appellee:
Counsel:

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/S/ Patrick Howard

Patrick Howard